

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

WILLIE J. SMITH, JR., )  
Petitioner, ) 2:08-cv-1552-GMN-VCF  
vs. ) **ORDER**  
BRIAN WILLIAMS, *et al.*, )  
Respondents. ) /

9 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254,  
10 by a Nevada state prisoner.

Petitioner has filed a motion for reconsideration. (ECF No. 42). Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), *cert. denied* 512 U.S. 1236 (1994). Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

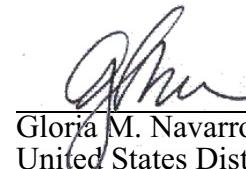
Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal.

1 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987). Rule 59(e) of  
 2 the Federal Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be  
 3 filed no later than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P.  
 4 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is  
 5 presented with newly discovered evidence, committed clear error, or if there is an intervening change  
 6 in the controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2001), quoting *McDowell v.*  
 7 *Calderon*, 197 F.3d 1253, 1255 (9<sup>th</sup> Cir. 1999). Federal courts have determined that there are four  
 8 grounds for granting a Rule 59(e) motion: (1) the motion is necessary to correct manifest errors of  
 9 law or fact upon which the judgment is based; (2) the moving party presents newly discovered or  
 10 previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4)  
 11 there is an intervening change in controlling law. *Turner v. Burlington Northern Santa Fe R. Co.*,  
 12 338 F.3d 1058 (9<sup>th</sup> Cir. 2003).

13 In the instant case, petitioner asks this Court to review previously entered orders on the basis  
 14 that this action was formerly assigned to the Honorable Robert C. Jones, and has been reassigned to  
 15 the undersigned District Judge. Petitioner appears to challenge this Court's prior order dismissing  
 16 several grounds of the petition. (ECF No. 29). Petitioner's motion presents arguments that were  
 17 previously considered and rejected. (See ECF No. 29). In his motion, petitioner has not identified  
 18 any mistake, intervening change in controlling law, or other factor that would require altering the  
 19 orders previously entered in this case. Petitioner has not shown that manifest injustice resulted from  
 20 the prior orders entered in this case. Petitioner also has not presented newly discovered or previously  
 21 unavailable evidence. Petitioner has failed to make an adequate showing under either Rule 59(e) or  
 22 Rule 60(b) to justify granting his motion for reconsideration.

23 **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration (ECF No. 42)  
 24 is **DENIED**.

25 Dated this 15th day of November, 2011.



26 \_\_\_\_\_  
 Gloria M. Navarro  
 United States District Judge